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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,735	09/15/2003	Simon Buckley	1104-762	1490

7590

05/18/2005

Woodard, Emhardt, Moriarty, McNett & Henry LLP  
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EXAMINER
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SMALLEY, JAMES N

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 05/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/662,735	<b>Applicant(s)</b> BUCKLEY ET AL.	
	<b>Examiner</b> James N Smalley	<b>Art Unit</b> 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 February 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3,6,7,10,13-16 and 20-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,6,7,10,13-16 and 20-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## DETAILED ACTION

### *Response to Amendment*

1. Examiner notes the Applicant's amendments to claims 1 and 14 to define living hinge strips, and furthermore adding new independent claims 22 and 23 comprise new issues. Accordingly, this Action can properly be made final.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 13-14, 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dwinell et al. US 6,726,048 in view of Guala US 3,630,404 and in view of Lindstrom US 4,658,980.

Dwinell '048 teaches a an overcap for covering a drum plug (6), comprising a top portion (21) with a pair of living hinge strips (27) partitioning the top into a center section and first and second outer sections, a surrounding sidewall, a center post, a sealing gasket (3), and tamper evidencing comprising tearing ear (29). Examiner notes that although the score lines are for tearing, they comprise an identical physical structure to living hinges, and are furthermore capable of performing like living hinges.

Dwinell '048 does not teach the post extending from the center section.

Guala '404 teaches a cap having a center section demarcated by grooves (20), and defining a center post (19) therebetween.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure cap of Dwinell '048, providing the center post on the center section, by relocating the score lines around the center post, as taught by Guala '404, because such is a mere change in the location of the working parts of the invention. It has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

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Examiner asserts the references are analogous because both are overcaps, design to snap into interior sealing caps, for tamper evidencing.

Furthermore, Dwinell '048 does not teach tamper evident means comprising first and second pins in unitary connection with the first and second outer sections.

Lindstrom '980 teaches a means for tamper evidencing comprising posts (46) for receipt by a closure base (14), and in unitary connection with first and second sections of an outer closure by frangible webs (54).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure overcap of Dwinell '048, providing tamper evident posts taught by Lindstrom '980, motivated by the benefit of further indicating tampering with the container first and second sections.

Examiner asserts the references are analogous because both are closures designed to indicate tampering.

4. Claims 2, 15-16 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dwinell et al. US 6,726,048 in view of Guala US 3,630,404 and in view of Lindstrom US 4,658,980 as applied above under 35 USC 103(a) to claims 1 and 14, in further view of Fernandes US 4,883,194.

Dwinell '048 does not teach the post having a series of external threads.

Fernandes '194 teaches a series of external threads (10) on a post (14) for engagement with the opening of a storage tank.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the posts and plug of Dwinell '048, providing the series of threads and providing internal threads to the plug, as taught by Fernandes '194, motivated by the benefit of strengthening the connection between the overcap and the plug.

Regarding claim 20, Examiner notes Lindstrom '980 teaches web sections designed to break upon bending of the corresponding pin.

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5. Claims 7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dwinell et al. US 6,726,048 in view of Guala US 3,630,404 and in view of Lindstrom US 4,658,980 as applied above under 35 USC 103(a) to claim 1, in further view of Korn US 4,461,389.

Dwinell '048 does not teach a raised portion extending across the weakened score lines.

Korn '389 teaches raised means in figs. 4-5, comprising the word, "DRUGS," to indicate fracture of a score line.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure cap of Dwinell '048, providing the tamper indication taught by Korn '389, providing raised portion across the score lines, motivated by the benefit of providing an indication of tampering with the overcap.

Regarding claim 10, Examiner notes Lindstrom '980 teaches web sections designed to break upon bending of the corresponding pin.

6. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Guala US 3,630,404 in view of Storar US 6,070,748.

Guala '404 teaches a closure cap comprising a top (17) with two slits (20) with frangible tabs (22) defining a center section (2a), and first and second sections, a surrounding sidewall, a pair of oppositely opposed flange sections (read by the Examiner to be the conical flange portions located between (15) and (15a), and which can be clearly seen as separated by the slits (20) in fig. 1), a post (19) extending from the center section to be secured to a lower closure plug (1), and tamper evidencing means comprising lines of weakness (21).

Guala '404 does not teach a pair of living hinge sections.

Storar '748 teaches a frangible outer cap member, comprising score lines (5), which are structurally equivalent to living hinge sections, and furthermore are functionally equivalent to the slits and frangible tabs taught by Guala '404.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure cap of Guala '404, replacing the slits and frangible tabs with score lines, as

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taught by Storar '748, because the two are mechanical expedients equally capable of fracturing to break away an outer closure cap.

### ***Response to Arguments***

7. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Allowable Subject Matter***

8. Claims 3 and 6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (571) 272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns

  
**JES F. PASCUA**  
**PRIMARY EXAMINER**